IN THE HIGH COURT OF JUDICAUTRE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1917 OF 2004
IN
SUIT NO. 3177 OF 2000

Centurion Bank Limited ... Plaintiffs

Versus

Koluthara Exports Limited
and Ors. ... Defendants

Mr. P.K. Samdani i/by W. Gandhy & Co. for Plaintiff.

Mr. Jose George for Defendants.

CORAM : A.M. KHANWILKAR,J.
DATED : JUNE 13, 2005

P.C.

1. Heard counsel for the parties. Perused pleadings.

2. The first prayer of this chamber summons is for condoning the delay in taking out present application. The delay is only of one day. However, in all fairness, the counsel for the Plaintiffs has not resisted this application on the ground of delay. Accordingly chamber summons will have to be made absolute in terms of Prayer Clause (a).

3. The contest between the parties is with regard to the reliefs in terms of Prayer Clause (b) which

in turn prays for revocation of leave granted by this court under Clause 12 of the Letters Patent. The leave under Clause 12 of the Letters Patent has been granted in view of the assertion made in Para 36 of the plaint which reads as under :

> "The said Agreements were executed by the parties in Mumbai. Under the said Agreements, the hire charges are payable to the Plaintiffs in Mumbai and have in fact been paid in Mumbai. The said Agreements provide for exclusive jurisdiction to Courts at Mumbai. The said Supplemental and Supplementary Agreements were also executed in Mumbai. Therefore, the material part of cause of action has arisen in Mumbai within the jurisdiction of this Hon'ble Court. However, the Defendants carry on business/reside at Kerala/Cochin and the Letter of Guarantee is executed at Kerala and the property mortgaged in favour of the Plaintiffs are also situated outside Mumbai. That part of cause of action has arisen out of Mumbai. In the circumstances, the Plaintiffs say and submit that on this Hon'ble Court

granting leave under Clause XII of Letters Patent, this Hon'ble Court will have jurisdiction to entertain and try this suit."

4. In this chamber summons, the defendants assert that the submission made in the plaint that the said agreements were executed by the parties in Mumbai is false. It is contended on behalf of the defendants that the supplementary agreement as well as guarantee was executed in Kerala as can be seen from the said document itself. In so far as agreement dated 28.3.2005 is concerned, the same nowhere mentions that it has been executed in Mumbai. On the other hand in the criminal proceedings taken out by the Plaintiff there is clear assertion that the said documents have been executed within the jurisdiction of the Ernakulam Court. In other words, it is contended that the inconsistent stand is taken by the Plaintiff in two proceedings between the parties before different courts namely criminal case and other case which is the present case pending before this court.

5. Having perused the pleadings and relevant documents, I have no doubt that the Plaintiffs have

taken inconsistent stand in two proceedings filed before different courts. In criminal action before Ernakulam Court, it is averred in Para 8 of the complaint that the documents in question have been executed within the jurisdiction of that court. On the other hand the same document though is subject matter of the present suit, it is averred in Para 36 of the plaint that the same has been executed in Mumbai. No explanation has been offered in the reply filed by the plaintiffs opposing the present Chamber summons with regard to this inconsistent stand taken on their behalf. To that extent, defendants are justified in contending that the Plaintiffs have approached this court with incorrect stand so as to invoke jurisdiction of this court.

6. In my view, however, the Plaintiffs are justified in contending that this court has rightly granted leave for institution of the present proceedings before the Bombay High Court. That stand is founded on the interpretation of the different clauses of the agreement dated 28.3.2005. In clause 3 of the said agreement it is provided that the hire charges shall be payable by the Hirer to the owner or owners designated Bankers at Bombay. The clause 4 provides that the hirer shall

be at liberty to terminate the hiring of all or any of the equipment at any time during the continuance of this Agreement by returning and re-delivering the equipment to the Owner at Bombay in the original order and condition. Clause 23 expressly provides for jurisdiction of the court to be at Mumbai. It is stipulated that it is agreed by and between the parties that the said agreement shall be subject to exclusive jurisdiction of the civil court of Greater Mumbai. My attention is also invited to schedule to the said agreement. In Clause 9, it is provided that all hire charges are payable monthly in advance at par at Bombay. In other words, Plaintiffs are justified in contending that on examining the terms of the agreement in question, it is more than clear that part of cause of action would and has arisen in Mumbai. If it is so, the issue that has been raised in the present application will have to be answered against defendants as clause 12 of Letters Patent enables this court to grant such leave in the event at least part of cause of action has arises within jurisdiction of this court.

7. Viewed in the abovesaid perspective, although defendants may be right in contending that the plaintiffs have taken inconsistent stand in

different proceedings about factor of place of execution of the documents, which in my opinion can be considered at the trial, the chamber summons taken out by the defendant cannot succeed. Hence,the same is dismissed in so far as Prayer Claus (b) and (c) are concerned. No order as to costs.

(A.M. KHANWILKAR,J.)